Supreme Court, U.S.
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No. _____

In the
Supreme Court of the United States

MICHAEL G. HOROWITZ, Ph.D.,
Petitioner,

v.

PEACE CORPS,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITION FOR WRIT OF CERTIORARI

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January 16, 2006 *Petitioner Pro Se*

QUESTIONS PRESENTED

FREEDOM OF INFORMATION ACT

PETITIONER'S CHALLENGE TO EXEMPTION 6

1. Whether it is proper for the Court of Appeals to deny a public interest challenge to Exemption 6 by:

   a. applying a stringent standard rejected as a FOIA standard by a recent ruling of this Honorable Court; and in any event,

   b. exporting the Exemption 7(C) ruling to *de novo* review of an Exemption 6 cross-appeal, said cross-appeal in no way implicating law enforcement or confidentiality?

CLAIM FOR SEGREGABLE PORTIONS OF THE SUBJECT DOCUMENT

2. Whether the Court of Appeals may properly deny a claim for segregable portions on the grounds that *no* portion can be reasonably segregated from *inter alia* the "context" of agency deliberation?

PETITIONER'S PRIVACY ACT CLAIM

3. Whether the Court of Appeals may properly:

   a. disregard a directive of the Peace Corps Manual to place a termination report[1] in a records system after effectively finding that petitioner's resignation was forced;

   b. effectively relieve the Government of its burden to disprove that the vault of Peace Corps' Tonga Post was a repository of agency records; and

   c. presume *a priori* that electronic files materially differ from their prompt printouts?

TREATMENT OF PETITIONER'S FIFTH AND SIXTH AMENDMENT CLAIMS

4. Whether – when the context of a case alters on appeal – the Court of Appeals may fairly permit the Government to "correct … defect" in pleading below while denying petitioner like opportunity?

PETITIONER'S RULE 60(b)(1) CLAIM

5. Whether the Court of Appeals misconstructs Federal Rule of Civil Procedure 60 at (b)(1) by conflating its remedial modality with its triggers?

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[1] In agency parlance, an Administrative Separation Report (ASR). See Cert. App. at iii for glossary of agency staff and terms. (Cert. App. denotes appendix to the instant petition; App. denotes appendix to petitioner's appellate briefs (04-5065 6/2/05)).

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PETITION FOR WRIT OF CERTIORARI

Petitioner Michael G. Horowitz, Ph.D. respectfully petitions for a writ of certiorari to review judgment of the instant case by the United States Court of Appeals for the District of Columbia Circuit.

OPINIONS BELOW

The United States Court of Appeals for the District of Columbia Circuit issued opinion October 28, 2005, but has not published it. (Cert. App. A). Mandate was stayed pending filing of the instant petition. (04-5065 12/19/05).

The United States District Court for the District of Columbia issued judgment October 12, 2001 and January 6, 2004, but has not published it. (Cert. Apps. B, C).

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

Section 552(a)(2)(A) of the Freedom of Information Act (FOIA) directs integral disclosure of a Government document, should the view expressed therein concur with a final opinion. But section 552(b)(5) permits withholding of intra-agency memoranda, while section 552(b)(6) permits the withholding of similar files whose disclosure would constitute a clearly unwarranted invasion of personal privacy.

Section 552(b) permits the disclosure of any reasonably segregable portion of a Government document, providing said disclosure does not harm an interest found protected by any of the exemptions described in subsections (b)(1)-(b)(7).

Section 552a(d)(1) of the Privacy Act entitles a citizen or permanent resident to copy any Government document pertaining to him/her that is contained in an agency records system, while section 552a(a)(5) defines said system as a group of records under agency control from which information is retrieved via personal identification.

In litigation, the Government has the burden to demonstrate that subject documents need not be disclosed under the Freedom of Information or Privacy Acts. 5 U.S.C. § 552(a)(4)(B), § 552a(g)(3)(A).

Section 7001(a)(1) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 (2001)) generally equates the validity of electronic and manual contracts.

Fed. R. Civ. P. 60(b)(1) enables relief from adverse judgment on just terms, if disadvantage has stemmed from *inter alia* surprise by the opposing party and/or mistake of counsel. Fed. R. Evid. 201 enables judicial notice of commonly known fact within a circuit.

The PROTECT Act (P.L. 108-21 (2003)) at 18 U.S.C. § 3283 enables indictment of the sexual abuse of a minor without geographic or statutory limitation.